

### **Remarks**

The following remarks are responsive to the Final Office Action of December 23, 2008.

At the time of the Final Office Action, claims 1-15 were pending. Claims 1-3 and 10-15 were rejected under 35 U.S.C. §102(e) as anticipated by Ashour et al. (U.S. Patent No. 6,459,797). Claims 4-5 were rejected under 35 U.S.C. §102(e) as anticipated by Ashour et al. and Fay et al. (U.S. Patent Application Publication No. 2002/0161462). Claims 6-8 were rejected under 35 U.S.C. §103(a) as obvious over Ashour et al. in view of Abel et al. (U.S. Patent No. 5,596,644). Claim 9 was rejected under 35 U.S.C. §103(a) as obvious over Ashour et al. and Hashimoto et al. (U.S. Patent No. 7,386,139). Claim 1-12 were rejected under 35 U.S.C. §101 as directed to a non-statutory subject matter. These rejections are respectfully traversed for at least the reasons discussed below.

Concerning the 35 U.S.C. §101 rejection, Applicants respectfully submit that method claims 1-12 were in compliance with §101. Nevertheless, to advance prosecution, and in consideration of the *In re Bilski* decision, independent claim 1 is being amended to recite a method *for operating a device*. Since the method is now clearly tied to a machine, claims 1-12 are in compliance with §101 even in view of *Bilski*. Hence, Applicants respectfully request that this rejection be withdrawn.

With regard to the rejection of claims 1-3 and 10-15 under 35 U.S.C. §102(e) as anticipated by Ashour, Applicants respectfully submit that discussed in the Remarks of the previous Response, Ashour merely discloses spatialization and synthesis *in two different processes* (i.e., in an MIDI synthesizer and in a digital mixer). As previously discussed, this technique is described in the background portion of the present application.

On the contrary, the claimed embodiments of the present invention provide a method, module, program and communication terminal that combine both synthesis and spatialization, and comprise a joint operation of determining parameters which define at the same time loudness and the position of the source. Applicants respectfully submit that column 3 of

Ashour states that “MIDI synthesizer 210 could be any suitable kind of synthesizer, e.g., an FM synthesizer or a wavetable or waveguide synthesizer. MIDI synthesizer 210 takes a MIDI data stream as input and generates in known fashion digital samples representing a number of instruments, **which are then combined in mixer 220** in the manner to be described below to generate a stereo output which can be decoded by a Pro Logic decoder...The overall operation of the audio card 160 is controlled via suitable software which runs on the computer. Part of the function of the software is to **control digital mixer 220 in order to enable the instrumental sounds generated by MIDI synthesizer 210 to be placed anywhere within a 360 degree sound field.**” (emphasis added).

Accordingly, Applicants respectfully submit that as is clear from the above, Ashour separates the synthetization of the sound signal and the spatialization. Hence, Applicants respectfully submit that Ashour does not anticipate the embodiments of the present invention even as recited in independent claims 1 and 13-15.

Concerning the rejections of the dependent claims, Applicants respectfully submit that Fay, Abel and Hashimoto fail to make up for the deficiencies in the teachings of Ashour. Fay is being cited merely for its alleged teaching of a temporal loudness variation. Applicants submit that Abel does not disclose a joint step for synthesis and spatialization, since the gains disclosed by Abel merely reflect the position of the source and do not define the audio source. Rather, the sound is already generated when the gains are applied. Hashimoto, on the other hand, does not deal with sound synthesis, but merely with sound reproduction.

Accordingly, Applicants respectfully submit that one skilled in the art would not have found it obvious or possible to have modified Ashour in accordance with the teachings of these references to have achieved the embodiments of the present invention even as recited in independent claims 1 and 13-15. Hence, all claims should be allowable.

In re Appln. of Nicol et al.  
Application No. 10/582,834  
Response to Final Office Action of December 23, 2008

**Conclusion**

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

/brian c. rupp/

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